IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.11.2006

CORAM:

THE HON'BLE MR. JUSTICE K.MOHAN RAM

Second Appeal No.460 of 1995

1.W.S.Magdoom Mohamed
2.W.S.M.Sulaiman
3.W.S.A.Rahman
4.W.S.M.A.Siddique
5.W.S.A.Gaffar
6.W.S.Zainulabdeen
7.W.S.Cader
8.W.S.Mohd. Ayisha Umma
9.W.S.Fathimuthu
10.A.H.M.Shahul Hameed
11.W.M.M.Shahul Hameed
12.W.M.M.Shamsudeen
13.Y.M.I.M.Mohideen
14.A.H.Naina Sahib
15.W.K.S.Nazar
16.M.A.Sadakathullah
17.Y.M.I.Wajeeha Begum
18.W.M.M.Maznavi
19.W.S.A.Shahul Hameed Shajahan . Appellants/Plaintiffs.
[Respondent 1 to 19 rep. by their
Power of Agent M/s.Wavoo Real Estate Corporation,
rep. by its Partner, WSM.Sulaiman].

-Vs-

1.The Assistant Revenue Officer,
Corporation of Madras.
2.The Commissioner,
Corporation of Madras. .. Respondents/Defendants.

APPEAL filed under Section 100 CPC against the judgment and decree dated 15.04.1994 made in A.S.No.116 of 1993 on the file of the Principal Judge, City Civil Court, Chennai confirming the Judgment and decree dated 27.03.1992 made in O.S.No.7653 of 1990 on the file of the IV Assistant Judge, City Civil Court, Chennai.

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For Appellants : Mr. A.J.Abdul Razak
For Respondents : Ms. R.K.Kalpana.

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J U D G M E N T

The unsuccessful plaintiffs in O.S.No.7653 of 1990 on the file of the IV-th Assistant Judge, City Civil Court, Chennai are the appellants in the above second appeal.

2. For the sake of convenience the parties are referred to as they are arrayed in the suit.

3. The brief facts of the case of the plaintiffs are as follows:-

The suit property belonging to the plaintiffs was assessed to property tax pursuant to the order of remand passed by the Taxation Appeals Committee and in accordance with the order dated 09.03.1982 passed in M.T.A.Nos.14 and 15 of 1981 by the Chief Judge, Small Causes Court, Chennai. The second defendant fixed the annual value of the suit property at Rs.2,98,116/- and at Rs.3,38,520/- for the first and second half years of 1977-78 respectively. The second defendant had clearly stated in the assessment order that the basis for assessment was the fair rent arrived at, as per the provisions contained in The Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (hereinafter referred to as "the Rent Control Act"). While so, the first defendant issued a notice to the plaintiffs on 17.07.1990 under Rule-3 of Part 1-A of Schedule-IV of The Chennai City Municipal Corporation Act, 1919 (hereinafter referred to as "the Act") enhancing the annual value of the property from Rs.3,38,520/- to Rs.10,09,554/- and proportionately increasing the half yearly tax from Rs.38,929.80 to Rs.1,16,098.80 and the library cess from Rs.1,523.35 to Rs.4,543/- with effect from the second half year 1989-90 and the plaintiffs were asked to submit their objections, if any, and accordingly they submitted their objections on 26.07.1990. The plaintiffs objected to the enhancement on the ground that it is not open to the defendants to fix the fair rent once again for the very same building since Section 5 of the Rent Control Act operates as a clear bar. Overruling the objections the proposed enhancement was confirmed and a notice was issued under Rule 3-A of Part 1-A of Schedule-IV of the Act. Being aggrieved by that, the plaintiffs have filed the suit seeking a decree to declare the notice dated 07.08.1990 issued by the first defendant under Rule 3-A enhancing the annual value from Rs.3,38,520/- to Rs.10,09,554/- and assessing the property tax at Rs.1,16,098.70 and Library Cess at Rs.4,543/- for the second half year 1989-90 in respect of the suit property as illegal, void and unenforceable in law and for a consequential permanent injunction restraining the defendants from demanding or collecting tax at the enhanced rate.

4. The second defendant filed a written statement inter-alia contending that the annual value of the suit property for the first and

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second half years of 1977-78 was fixed by limiting the rental value of the extent of rent determinable under fair rent formula laid down in the Rent Control Act; since after 13 years of the assessment it had come to the notice of the defendants that the rental value of the suit property has gone up substantially on account of the occupation of the premises by the State Bank of India and Southern Tele Communication Region, the annual value of the suit property was revised based on the rental value of Rs.92,450/- per month, arrived at as per the fair rent formula as against the actual total rent of Rs.2,21,654/- per month paid by the tenants; the revised assessment was being made in pursuance of Section 100 read with 137(b) of the Act; the notice issued under Rule-3 read with Section 137 (b) of the Act was issued intimating the proposal to revise the assessment and calling for objections and after hearing the owner on 26.07.1990; a special notice under Rule 3-A was issued which according to the defendants is perfectly in accordance with the provisions of the Act. The defendants have further contended that they have fixed the fair rent in respect of the suit property for assessing the property tax and they have not fixed the fair rent payable by the tenants and the fair rent payable by the tenants are fixed only by the Rent Controller under the Rent Control Act and therefore the contention of the plaintiffs based on Section 5 of the Rent Control Act is unsustainable. The defendants further contended that the assessment made in compliance with the provisions of the Act cannot be impeached as per Section 401 of the Act.

5. After framing appropriate issues the suit was taken up for trial and during trial on behalf of the plaintiffs one K.S.Nasar was examined as P.W.1 and Exs.A-1 to A-8 have been marked. On the side of the defendants, no witness has been examined and no document has been marked. On a consideration of the oral and documentary evidence adduced in the case the trial court holding that the annual rental value has been arrived at following the fair rent formula prescribed under the Rent Control Act dismissed the suit. Being aggrieved by that the plaintiffs filed an appeal in A.S.No.116 of 1993 before the Principal Judge, City Civil Court, Chennai. The lower appellate court though noticed the amendment introduced by G.O.Ms.No.1178, Municipal Administration and Water Supply, dated 10.12.1987 to Part-I-A to Schedule-IV of the Act and considered the fact that the notice proposing to revise the assessment Ex.A-6 was issued under Rule-3 of the old rules and a special notice-Ex.A-8 was also issued under Rule-3A of the old rules held that as the plaintiffs have not objected the same on the ground that the old rules have been amended, it will amount to waiver on the part of the plaintiffs. The lower appellate court on that ground held that the non-mention of the new rules in Ex.A-6 and Ex.A-8-notices will not affect their validity and it came to that conclusion by pointing out that the plaintiffs have not questioned the validity of Exs.A-6 and A-8-notices on that ground. Though the lower appellate court pointed out that the legal issues can be raised at any point of time held that the plaintiffs have given up their right to challenge Ex.A-6 and Ex.A-8-notices as invalid. The lower appellate court

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by referring to the decision reported in 1992 (1) Law Weekly 110 (Chellammal Vs. Alandur Municipality, represented by its Commissioner) observed that if there was no basis or the basis adopted for assessing the property tax was against the provisions of the Act, the Court can always set-aside the assessment, but held that since the property tax has been fixed based on the fair rent formula, Ex.A-6 and Ex.A-8-notices are valid and accordingly dismissed the appeal. Being aggrieved by that the above second appeal has been filed.

6. While admitting the second appeal, the following substantial question of law has been formulated:-

> "Are not the notices issued under Rule-3A dated 17.03.1990 and 10.08.1990 respectively and marked as Exhibits A-6 and A-8 are invalid and illegal as the entire Part IA of the Schedule IV of the Madras City Municipal Corporation Act has been amended by G.O.Ms.No.1178 (Municipal Administration and Water Supply) dated 10.12.1987 which came into force with immediate effect on and from 10.12.1987?"

7. Heard both.

8. The learned counsel for the appellants submitted that by G.O.Ms.No.1178 dated 10.12.1987 amendments were made to Schedule-IV of the Act. In place of the existing Part-IA to Schedule-IV to the Act new rules were substituted prescribing the procedure to be followed for assessment of property tax. According to the learned counsel the amendment came into force with immediate effect except Amendment No.2, which came into force on 1st April 1988. The learned counsel further submitted that the fact that Exs.A-6 and A-8-notices have been issued under the unamended rules is admitted by the defendants. When the new rules have come into force with effect from 10.12.1987 and the revision of property tax relates to the assessment year 1989-90, the procedure for assessment as prescribed under the Rules as amended alone should have been followed and not the procedure that existed before 10.12.1987 i.e., as per the unamended Rules. The learned counsel further submitted that as admittedly the original assessment was made following the fair rent formula prescribed under Section 4(1) of the Rent Control Act the same cannot be revised in view of the bar contained under Section 5 of the Rent Control Act.

9. Per contra the learned counsel for the respondents submitted that in the objections-Ex.A-7 filed by the appellants they have not questioned the validity of Ex.A-6-notice issued under the old Rules and as such, as rightly pointed out by the lower appellate court, the appellants have waived their right to question the validity of Exs.A-6 and A-8-notices.

10. I have carefully considered the submissions made on either side, the unamended rules as well as the amended rules and the relevant provisions of law. It has to be pointed out that the trial court has not

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at all considered the legal issues involved in the case. Though the lower appellate court considered the legal issues, but has erred in holding that the plaintiffs have waived their right to challenge the validity of Exs.A-6 and A-8-notices as they have not questioned the validity of Ex.A-6 notice in their objections submitted under Ex.A-7. The lower appellate court though rightly pointed out that if there is no basis or the basis adopted for assessing the property tax is incorrect then the Court can set-aside the assessment but failed to consider the crucial aspect that the amendment to Part-IA to Schedule-IV of the Act came into force with effect from 10.12.1987 itself. As per the provisions contained in Part-IA to schedule-IV of the Act after amendment a new procedure has been prescribed. It is fundamental that once a procedure is prescribed under the Rules relating to assessment of property tax the same has to be followed and admittedly in this case the same has not been followed. Simply because the plaintiffs had not questioned the validity of Ex.A-6-notice in their objections submitted under Ex.A-7, it cannot be held that the plaintiffs have waived their right to challenge the validity of Exs.A-6 and A-8. It is settled law that there cannot be estoppel against a statute. On this ground alone the judgment and decree of the Courts below are liable to be set-aside. The substantial question of law framed is answered holding that the notice issued under Rule-3A dated 17.07.1990 and 10.08.1990 and marked as Exs.A-6 and A-8 respectively are invalid and illegal.

11. However it has to be pointed out that the contention of the plaintiffs that as the property tax had been assessed by the defendants by adopting the formula prescribed under Section-4 of the Rent Control Act, they cannot revise the property tax by enhancing the fair rent once again in view of the bar contained under Section-5 of the Rent Control Act is, not legally sustainable.

12. A reading of Section 4 of the Rent Control Act shows that the Rent Controller on application made by the tenant or the landlord of a building and after holding such enquiry as he thinks fit shall fix the fair rent for such building in accordance with the principles set out in Section 4, whereas Section 5 of the Rent Control Act provides that when a fair rent of a building has been fixed or re-fixed under the Rent Control Act, no further increase in such fair rent shall be permissible except in case as provided in that Section. Admittedly in this case, it is nobody's case, that fair rent for the suit building was fixed under Section-4 of the Rent Control Act by the Rent controller, on an application filed either by the tenant/tenants or the landlord/landlords and only when fair rent is fixed by the Rent Controller under Section 4 of the Rent Control Act on an application filed by the tenant or landlord as the case may be, the bar under Section 5 of the Rent Control Act will come into operation. Simply because the defendants have adopted the formula prescribed under Section-4 of the Rent Control Act for arriving at the annual rental value of the suit premises prior to 1989-1990 and they are seeking to revise the property tax by re-fixing the annual rental value by again following the

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formula prescribed under Section-4 of the Rent Control Act, the contention of the plaintiffs based on the bar contained under Section-5 of the Rent Control Act cannot be countenanced. The fixation of annual rental value of a building for the purpose of assessing the building to property tax under the Act cannot be equated with the fixation of fair rent under Section 4 of the Rent Control Act by the Rent controller on an application filed by the tenant or landlord as the case may be. If the contention of the learned counsel for the appellants is accepted that will amount to preventing the defendants from revising the property tax of a building once the property tax has been fixed on the basis of fair rent formula prescribed under the Rent Control Act. However it has to be made clear that if fair rent for a building has been fixed by the Rent Controller, on an application filed before him under Section 4 of the Rent Control Act either by the tenant or landlord of the building and the fair rent so fixed for the building has been taken as the basis for arriving at the annual rental value of the building for assessing the building to property tax, the property tax cannot be revised by again revising the annual rental value of the building. If in a given case the fair rent for a building under Section 4 of the Rent Control Act is refixed as contemplated and provided for under the Rent Control Act, then the defendants can take the re-fixed fair rent as the basis for revising the annual rental value of the building and consequently for revising the property tax assessment.

13. In the result the second appeal is allowed, the judgment and decree of the Courts below are set-aside holding that Exs.A-6 and A-8-notices are invalid in view of the new Rules introduced with effect from 10.12.1987 in Part-IA to Schedule-IV of the Act and the matter is remitted back to the Assessing Authority for fresh disposal and the Assessing Authority shall pass assessment orders afresh for the period in question after giving an opportunity of hearing to the appellants herein and as per the amended Rules contained in Part-IA to Schedule-IV of the Chennai City Municipal Corporation Act, 1919 and in the light of the observations contained herein. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To
1. The Principal Judge, City Civil Court, Chennai

2. The IV-th Assistant Judge, City Civil Court, Chennai.

3. The Registrar, City Civil Court, Madras.

4. The Section Officer, VR Section,
High Court, Madras.

+ 1 CC To Mr. R.K.Kalpana Advocate SR NO.56710

+ 1 CC To Mr. A.J.Abdul Razak, Advocate SR NO. 57269

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